

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: W.D.Cowls, Inc., represented by Evan Jones

Date Application filed with the Town Clerk: April 15, 2005

Nature of request: A Special Permit under Section 3.371 and Table 3, footnote "a" of the Zoning Bylaw to construct open air lumber racks for storage and to modify the setback requirement.

Location of property: 125 Sunderland Road (Map 5A, Parcel 139, COM Zone)

Legal notice: Published on May 11th and 18th, 2005 in the Daily Hampshire Gazette and sent to abutters on May 12, 2005.

Board members: Zina Tillona, Ted Rising and Joan Golowich

Submissions: The applicant submitted the following:

- A site plan by Garrity & Tripp, dated 11-4-02, amended to show the location and dimensions of the new lumber racks.
- A map showing the reconfiguration of the abutting residential property (Map 5A, Parcel 29) to better accommodate the lumber racks, Planning Board ANR approval on 5-4-05.
- A Site Management Plan for the lumber racks
- Lighting and Soil Erosion Plans for the new building addition close to the storage racks.

Neighbors Paola Di Stefano, James Steinberg, Patricia Holland, and Fran Van Treese submitted a letter of complaint concerning the storage of logs and lumber, to the Building Commissioner, dated May 24, 2005.

Cinda Jones, from D.W.Cowls, Inc, submitted a response to the above complaint to the Planning Department, dated May 25, 2005.

Town staff submitted the following:

- A review from the Assistant Fire Chief Mike Zlogar, stating that the proposed location of the racks does not appear to impede access by fire apparatus to the building, nor to the new and existing racks, dated April 25, 2005.
- A question from the Town Engineer, Jason Skeels, wondering if the rack location will impact employee parking, and whether there would be enough parking overall

with the added racks, dated April 22, 2005.

Site Visit: May 24, 2005

Evan Jones met with the Board, and showed them the lumber racks, already constructed. The Board observed the following:

- The large size of the racks (120'), designed for excessively long lengths of lumber
- The close proximity to the property line and to the garage of the abutting residential property.
- The other storage racks on the property, some that are permanent structures and some that are moveable.
- The bare earth of the open storage area, with resulting runoff issues.

Public Hearing: May 26, 2005

Evan Jones represented W.D.Cowls, Inc. at the hearing. He said that the company has constructed many lumber racks in the past, but they are requesting to locate this large rack within the Cowls property setback. The minimum setback required by the Zoning Bylaw in a Commercial District is 25 feet for rear and side yards. The setback can be modified in this zoning district by a Special Permit with the Zoning Board of Appeals, according to Table 3, Dimensional Regulations of the Zoning Bylaw.

The petitioner stated that the rack is for extra long lumber and needs a large, clear turning radius for the lumber to be maneuvered on and off trucks. The proposed location is the only one on the lot that meets this criterion, he said.

Mr. Jones said that the other issue of concern is drainage. A "Soil Erosion" plan had been approved by the Planning Board as part of the building addition on the site, since soil/sediment washes out into the roadways at times. Catch basins and trenches have been built on site, and the location of the new lumber racks was chosen so as not to interfere with ongoing drainage control measures.

The petitioner stated that, in order to site the new racks, the lot lines on an adjacent property to the west along Sunderland Road needed to be reconfigured by the Approval Not Required (ANR) process with the Planning Board. The abutting property also is owned by W.D. Cowls and used as rental housing. One corner of the new lumber racks previously had intruded onto this property.

The adjacent residential property has been non-conforming with Zoning Bylaw requirements in three ways: 1) residential single-family homes are not permitted in a Commercial District, but this house has been "grandfathered" since the Zoning Bylaw was first enacted, and 2) the property is less than the 20,000 sq. ft. required in a Commercial District, 3) the location of the house has been non-conforming as to the rear and sideyard setback requirements. The ANR reconfiguration changed the lot from a six-sided to a four-sided one, and increased the area from 12,251 to 14,230 square feet. The lot remains non-conforming, though less so, and its boundaries are now slightly further away

from the lumber racks.

ZBA Chair Ms. Tillona asked the petitioner why the Special Permit request had come “after the fact”. The rack has already been built, and the Board is not inclined to look favorably on such requests.

Mr. Jones said that he misinterpreted the law. He thought that since some of the other lumber racks had not needed a Special Permit, this one did not need permission from the Town either.

Bonnie Weeks, Building Commissioner said that this particular set of racks required architectural design and is built on a concrete pad. Therefore it is a structure, not portable and needs a Special Permit to place it within the setback.

Ms. Tillona asked that if the adjacent property with the house were sold, could the racks be moved? Mr. Jones said that the racks would be moved if the house no longer belonged to Cows family.

Ms Golowich noted that the rack is very close to the house and garage on the adjacent property. In fact, both the garage and the rack are non-conforming in that they are both well within the 25-foot required setback.

Mr. Jones said that the rack is 6 feet from the lot line and 16 feet from the garage. That is, the rack is 19 feet within the setback at the southern end; the garage is 15 feet within the setback for its entirety.

Mr. Rising asked if the property lines were erased between the rental house and the main property, would that solve the setback problems.

Ms. Weeks said that the Zoning Bylaw does not allow two principle uses on the same lot (Section 3.01), so that the lots cannot be combined.

The Board inquired about any other location on the site for the new racks, other than in the setback. Mr. Jones said again that because of the drainage problems on site, and the radius needed for turning and moving long lumber, no other location will work.

Ms. Tillona noted that the Board received a copy of a letter from abutters to the Building Commissioner. Though the abutters’ concerns are not directly related to the Special Permit application, the Board will hear them after dealing with the lumber rack issue.

Four abutters spoke at the hearing with general questions concerning setback issues. Paola Di Stefana, 155 Montague Road, said that the setback on Cows Road is 20 feet. Why are there setback requirements on other properties, but not on Jones’ rentals? Shouldn’t renters have the same rights as property owners?

The Building Commissioner responded by clarifying that in Commercial Districts, setbacks can be waived by the Board. Most of Cowls Road is in the COM district; the lumber stacks located along roadway are not structures, and can exist within the setback.

Mr. Jones further noted that the logs located in the back of the rental properties along Montague Road are allowed in any zoning district. Section 3.310 of the Zoning Bylaw allows "forestry and the harvesting of forestry products" in any location in Amherst.

James Steinberg, 115 Montague Road, and Patricia Holland, 105 Montague Road, both were concerned about the closeness of the lumber rack to the adjacent house. They sited the previous fire on the site, and said that setbacks were important because of the fire hazard.

Mr. Jones responded that the Fire Department gave an okay on the proposal. Also, there is no electricity connected to this lumber rack, which was involved in the previous fire.

Fran Van Treese, 150 Montague Road, said that she lives across from what is now "the office" (formerly Walter Jones' home) and sees the increased activity there. She also thinks that the piles of lumber lining Cowls Road behave like structures, because they are there year round.

Ted Rising moved to close the evidentiary part of the hearing. Zina Tillona seconded the motion, and the vote was unanimous.

Public Meeting:

The Board deliberations began with all members expressing disapproval that this application was *ex post facto*, but did understand the petitioner's oversight in this case.

The Board agreed with the petitioner that, given the extra length of the lumber, the proposed location seemed to be the only one on site that would be workable.

Ms. Tillona summarized three reasons that the location of the proposed lumber racks can be approved in this situation.

1. The rack of lumber is not a brick wall. It is open and does not visually constrain the residents of the abutting property.
2. The abutter directly affected is the Petitioner, Cowls Lumber, Inc.
3. Should the rental property adjacent to the racks be sold, the rack structure can be moved to another location at that time.

The Board discussed the submitted management plan, and determined that only the security lighting for the business was relevant to this proposal. The plan was modified and accepted.

Although not directly part of the proposal, the Board asked the Building Commissioner to

address the three complaints from the neighbors' submitted letter. Ms. Weeks responded:

1. The storage of logs in a residential zone is permitted via Section 3.310 of the Bylaw, as long as it's just the logs that are stored in the adjacent R-N zone. Forestry is allowed by right in any zoning district (Logs are considered forestry, whereas lumber, the finished product, is not.)
2. The saw mill and store are in a Commercial District, where such activity is permitted. The new saw mill received a Special Permit for its current location in FY2003. The previous location was too close to the road and was non-conforming. Hence the change in location.
3. The stacks of lumber along Cowls Road are not structures and can be placed within the setback. The Fire Department has given suggestions to Cowls about the storage of lumber. They also have required an open fire lane from Montague Road, which unfortunately is what makes the saw mill more visible to the residents of Montague Road.

The neighbors expressed frustration that the lumber business is treating the R-N zone along Montague Road as commercial property, and is spreading their business out into the residential neighborhood. The neighbors would like know the rules concerning commercial versus neighborhood property and want Cowls, Inc. to follow them.

Ms. Tillona responded that the company is most likely following the "rules", but may be reaching the boundaries of doing so.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 & 10.381 – The proposal is suitably located in the neighborhood in which it is proposed, since the zoning district is a commercial one, and side yard setbacks can be modified by Special Permit if the use is compatible with other uses. Most of the other lumber racks on site are allowed by right.

10.382, 10.384 & 10.385 – The proposal would not create a visually offensive structure or be a hazard to abutters or vehicles because it is located in a corner of the site where vehicles and pedestrians do not go, the area is all commercial along Sunderland Road, and the rack structure is open, well built. The area on three sides of the structure is open as well.

10.387 & 10.388 – The proposal provides safe vehicular and pedestrian movement within the site because it is located in a corner of the property, away from public parking and pedestrians. It is located specifically to ensure adequate space for off-street loading and unloading of lumber.

10.390 & 10.394 – The proposal helps give protection from flood hazards by not being located in the drainage measures that have been installed on site.

10.390 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting since it does not have any exterior lighting of its own, but helps to shield the abutting residential properties from the lighting from Cowls retail store and the

main lumber storage shed.

10.398 – The proposal is in harmony with the general purpose and intent of this Bylaw in that it helps to maintain economic activity in the Town, thus promoting the general welfare of the inhabitants of the Town of Amherst.

Zoning Board Decision:

Joan Golowich MOVED TO APPROVE the proposal, with conditions. Ted Rising seconded the motion.

For all of the reasons stated above, the Board VOTED UNANIMOUSLY to grant a Special Permit to W.D.Cowls, Inc. under Section 3.371 and Table 3, footnote "a" of the Zoning Bylaw to construct open air lumber racks for storage and to modify the setback requirement on the premises at 125 Sunderland Road, (Map 5A/Parcel 139, COM Zone), with conditions.

ZINA TILLONA

TED RISING

JOAN GOLOWICH

FILED THIS _____ day of _____, 2005 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2005.
NOTICE OF DECISION mailed this _____ day of _____, 2005
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2005,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to W.D.Cowls, Inc. under Section 3.371 and Table 3, footnote "a" of the Zoning Bylaw to construct open air lumber racks for storage and to modify the setback requirement on the premises at 125 Sunderland Road, (Map 5A/Parcel 139, COM Zone), subject to the following conditions:

1. The lumber racks shall be located on site as shown on the site plan prepared by Garrity & Tripp, dated 10-9-02, and approved by the Board on May 26, 2005.
2. Security lighting shall be as described on the Management Plan approved by the Board on May 26, 2005, and on file in the ZBA office.
3. This permit shall expire upon change of ownership (W.D. Cowls, Inc.) of the residential property immediately adjacent to the location of the lumber racks.

ZINA TILLONA, Chair
Amherst Zoning Board of Appeals

DATE